

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
MICHAEL KEVIN DUPONT)	
Petitioner,)	
)	
v.)	Civil Action No. 04-11431-GAO
)	
DAVID NOLAN)	
Respondent.)	
=====)	

**MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS FOR
FAILURE TO EXHAUST STATE COURT REMEDIES**

The respondent, through counsel, moves to dismiss this petition seeking a writ of habeas corpus for failing to state a claim upon which relief can be granted. In support of his motion, the respondent states that the petitioner has presented this Court with a mixed petition, having failed to exhaust the claims contained in grounds one through seven, fifteen and sixteen of his petition. Because the petitioner has not yet provided the state's highest court with the first opportunity to pass on the merits of this claim, the petition should be dismissed. 28 U.S.C. § 2254(b)-(c). The respondent reserves the right to submit a memorandum raising additional defenses, if necessary.

In support of this motion, the respondent relies upon a memorandum of law and an Answer and Supplemental Answer filed with this Court.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s Susanne G. Reardon

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Dated: August 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached documents was served upon petitioner, Michael Kevin Dupont, pro se, P.O. Box 100, S. Walpole, MA 02071 by first class mail, postage pre-paid, on August 20, 2004.

/s Susanne G. Reardon

Susanne G. Reardon
Assistant Attorney General